

GOOD ROADS DISTRICT NO. 1

IBLA 76-343

Decided June 7, 1976

Appeal from decision of the Shoshone (Idaho) District Office, Bureau of Land Management, rejecting free use permit application I-10064.

Set aside and remanded.

1. Airports--Applications and Entries: Generally-- Materials Act--Public Lands: Leases and Permits-- Segregation: Generally--Segregation: Filing of Application

It would not be improper to issue a free use permit to a qualified applicant for land included in, and segregated by, an airport lease application where the airport lease applicant is a governmental entity and it consents to the issuance of the free use permit and such issuance is consistent with the public interest.

APPEARANCES: William R. Hill, President, Good Roads District No. 1, Jerome, Idaho, and James T. Jones, Esq., Jerome, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Good Roads District No. 1, Jerome, Idaho, appeals from a decision of the Shoshone (Idaho) District Office, Bureau of Land Management (BLM), dated November 14, 1975, rejecting its application for free use permit I-10064 for the stated reason that the land for which appellant applied was segregated from appropriation because it was included in the land [**2] described by airport lease application I-4828, filed on February 9, 1972, by the Board of County Commissioners, Cassia County, Idaho. BLM held that the segregation was triggered by 43 CFR 2091.2-2 and 43 CFR 2911.2-3, which in essence provide that the filing of an airport lease application segregates the lands applied for.

In 1970, appellant was issued a free use permit which expired in 1975. The application which is the subject of this appeal involves the land embraced by the expired permit. Appellant states that it will be "put out of business" because it lacks the financial resources to haul gravel from beyond its boundaries. Appellant claims that its use of the land would not interfere with the proposed airport.

Free use permits are authorized by the Materials Act, as amended, 30 U.S.C. § 601 (1970). That act provides, inter alia:

Where the lands have been withdrawn in aid of a function of * * * a State, Territory, county, municipality, water district or other local governmental subdivision or agency, the Secretary may make disposals under this subchapter only with the consent * * * of such State, Territory, or local governmental unit.

[1] In the instant case, the lands are not withdrawn but only segregated by the airport lease application of the Cassia County Board of Commissioners. We believe that the District Office should determine whether the airport lease applicant would consent to the free use permit. It would not be improper to issue a free use permit to a qualified applicant for land included in, and segregated by, an airport lease application where the airport lease applicant is a governmental entity and it consents to the issuance of the free use permit, and such issuance is consistent with the public interest.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for consideration consistent with this opinion.

Frederick Fishman

Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

I concur in the result:

Joan B. Thompson
Administrative Judge.

